IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2618 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REPROLITH PVT.LTD.

Versus

BIDDLE SAWYER CORP.

Appearance:

1. First Appeal No. 2618 of 2002
MR JT TRIVEDI, MR BJ TRIVEDI, MR ST ZUMKHAWALA and
MR RG BULCHANDANI for appellant
MR JB PARDIWALA for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Admit. Mr.Pardiwala, learned Counsel waives the service of admission on behalf of the respondent.

2. With the consent of learned Counsel appearing for the parties, this appeal is finally heard today.

3. The appellant - original defendant has filed this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree passed in Special Civil Suit No. 193 of 2000 by the learned Civil Judge (SD), Valsad on 18.10.2002.

The respondent filed Special Civil Suit No.193 of 2000 for recovering Rs.84,98,197.65 ps with running interest and costs from the appellant. It appears that though the appellant engaged a Lawyer who filed his appearance, failed to file the written statement. It also appears that even though number of adjournments were granted by the Trial Court, since no written statement was filed, the Court closed the right of the appellant to file written statement, by passing an order below Application Exh.18. It further appears that the respondent filed application Exh.19 for passing the decree as provided in Order VIII Rule 10 of the Code of Civil Procedure, 1908 on 11.9.2002. The trial Court decreed the suit by passing an order on 18.10.2002, which is under challenge in the present appeal.

4. Learned Counsel for the appellant submits that those in charge of the Management of the appellant were not informed by its Lawyer about the proceedings of the suit, the said Lawyer, according to the learned Counsel, simply gave assurance that he would prepare a draft written statement and after getting approved, would file the same and that the Management was asked not to worry, but as and when necessary, the Lawyer would advise for preparing the draft of the written statement. It was only when an enquiry was made recently about the position of the suit, it was revealed that the suit has been decreed. Under the circumstances, learned Counsel submits that the appellant may not be penalised for the negligence/lapse on the part of its learned Advocate.

5. After having seen the provisions of Order VIII Rule 10, it appears that it is not mandatory for the Court to pass a decree in favour of the plaintiff straightway because the written statement has not been

filed. It is a matter for the Court to exercise the discretion as to the manner in which the further proceedings should take place. In any case, considering the facts and circumstances of the case, we feel that in the instant case, the Court could have granted reasonable opportunity of being heard to the appellant -defendant who had failed to file the written statement. We are supported by a decision of this Court rendered in the case of C.N.Shah v. B.V.Thakkar, reported in 1995(2) GLR 1078. In an identical situation, this Court, considering the provisions of Order VIII Rule 10 of the Code of Civil Procedure felt that the Court has a discretion in the matter and without affording an opportunity to the defendant, power should not be exercised. In that view of the matter, we feel that this appeal is required to be allowed by remanding the matter to the trial Court with a direction to hear and decide the application Exh.18 filed by the respondent under Order VIII Rule 10 of the Code of Civil Procedure, afresh after giving an opportunity to the appellant - defendant of being heard. Needless to say that the parties will be at liberty to raise all contentions available to them. In view of this, we set aside the order dated 18.10.2002 passed below application Exh.1 in the Suit by the learned Civil Judge (SD), Valsad. The appeal is accordingly allowed. There shall be no order as to costs.

6. At this stage, learned Counsel for the appellant requests that the Court below may be directed to hear and decide the matter expeditiously. Considering the said request, the trial Court is directed to hear and decide the matter as expeditiously as possible preferably within six weeks from the date of receipt of the order of this Court. The amount of Rs.1,00,000/- (Rupees One lac only) deposited by the appellant shall be permitted to be withdrawn by the respondent subject to the order that may be passed by the trial Court in the Suit, including the amount of interest. Direct service is permitted.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)
Sreeram.